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March 12th 2015

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Australia: Dismissal for sending offensive emails considered harsh and unreasonable

A Full Bench of Australia's Fair Work Commission has made an interesting ruling regarding dismissal for inappropriate use of work email.

The case concerned an employee who had forwarded emails that were deemed to be extremely offensive, inappropriate and vilifying towards those of the Muslim faith. The employee was verbally warned that sending these types of emails through the company email system was not permitted, however he continued to send them. The employer, claiming that the employee's conduct had damaged the relationship of trust and confidence and had the potential to harm the company's reputation, dismissed the employee.

Although it was found that there was a valid reason for dismissal, the decision to dismiss was deemed to be harsh and unreasonable. The Commission took into account a number of factors, such as the employee's age (65), length of service and unblemished professional

record; the employee's limited chances of finding another comparable job; the lack of evidence that the employee had received training on acceptable email use; and the fact that the employee had not been formally warned about his inappropriate email use before dismissal.

When considering the remedies, the Fair Work Commission noted that the employee did not show any remorse for sending the emails. As such, the Commission decided that it was not appropriate to reinstate the employee — instead they awarded him compensation. Due to the fact that the employee had significantly contributed towards his dismissal, the compensation award was reduced by 50%. [Ronald Anderson v Thies Pty Ltd [2015] FWCFB 478]

Europe: Dismissal for criticising employer held to have breached right to freedom of expression

According to the European Court of Human Rights (ECtHR), the dismissal of an employee for publicly criticising his employer amounted to a breach of his right to freedom of expression.

In this case, an employee had objected, in numerous emails, to proposals made by his employer. He had also criticised elements of the structure and leadership of the employer's organisation. He informed his employer that he would make his opinions on these matters public if they followed through with the proposals. The proposals were implemented and so the employee went public with his opinions.

The employer, believing that the emails contained unreasonable demands, blackmail and threats, dismissed the employee and the Latvian courts upheld the dismissal. However, the ECtHR held that the Latvian courts had not considered that many of the employee's accusations were true; that some of the issues raised were of public interest; and that the employee had not disclosed information that was detrimental to the dignity of his employer or colleagues. [Rubins v Latvia [2015] ECHR 2 January 13th 2015]

Germany: Court imposes restrictions on employee monitoring

In a recent ruling, the German Federal Labour Court (BAG) established limits to the accepted monitoring of employees who are believed by their employer to be feigning sickness.

This case concerned an employee who became sick soon after a series of disagreements with her supervisors. The employee submitted six successive incapacity certificates to her employer but despite these her manager doubted her claims of incapacity and hired a detective to monitor her for four days. The detective took photos and video recordings of the employee which showed the employee acting in a way that contradicted her claims of incapacity.

The BAG held that the monitoring undertaken by the employer was unlawful. It stated that an employer is only permitted to monitor their employees if they have

firm suspicions of a serious breach of duty, which are based on specific facts. In this particular case, the BAG considered the employer's doubts to be based on speculation and as such the employer's actions were found to be unlawful. [8 AZR 1007/13]

Global: Implementation of global maternity policy

British multinational telecommunications company, Vodafone, has become one of the first multinational companies to offer a global harmonised maternity policy covering its employees in Africa, the Middle East, Asia-Pacific, Europe and the US.

The company announced that they will grant their female employees across the world at least 16 weeks of fully-paid maternity leave. Female staff will also be able to work a 30-hour week on full-time pay for the first six months after returning from maternity leave.

Statutory maternity leave rules differ considerably around the world with some countries guaranteeing only short periods of paid maternity leave and some offering no maternity support at all. Employers may offer maternity provisions that are more generous than the minimum requirements set out by law but they may not offer less generous provisions.

Vodafone has said they believe that offering these benefits — even where they far exceed the minimum legal requirements of the country — will save the company money overall. It is estimated that retaining female members of staff after they have a baby will save the company more money on recruitment and training costs than they will spend on financing these generous maternity benefits.

For information on maternity leave laws around the world please consult our international [HR Knowledgebase](#).

South Africa: Long-term visas available for BRICS countries

The government of South Africa recently announced its endorsement of long-term port-of-entry visas for its BRICS partner countries.

Under this new scheme, business executives from Brazil, Russia, India and China will be able to obtain business visas allowing them to enter South Africa on multiple occasions for up to 30 days per visit. The visas will remain effective for the duration of validity of the traveller's passport, but for no longer than ten years.

These multiple-entry visas will apply retrospectively as of December 23th 2014.

UK: First national decision on obesity as a disability

The principles established by the European Court of Justice (ECJ) in last year's obesity discrimination case were recently applied for the first time in the UK.

In 2014, the ECJ held that, if a worker's obesity entails a long-term limitation which results from physical, mental or psychological impairments which may hinder the full and effective participation of the worker in their professional life, such obesity may count as a disability.

In this latest UK case, which was brought before a tribunal in Northern Ireland, the employment judge said they were satisfied that the employee has suffered harassment by his colleagues due to reasons in relation to his disability (i.e. his obesity). The employee had a body mass index of 48.5 and, as a result, suffered from sleep apnoea and gout. The judge found that the colleagues' comments violated the employee's dignity and created an offensive environment.

Notably, there was medical evidence that suggested that the employee's obesity was 'self-inflicted'.

However, the tribunal was clear that what mattered was the effect of the condition on the worker, rather than its cause. [Bickerstaff v Butcher NIIT/92/14]

USA: Employers in D.C. must accommodate pregnant employees

Enhanced protection is now available for pregnant workers in the District of Columbia (D.C.) following entry into force of the Protecting Pregnant Workers Fairness Act on March 3rd 2015.

The Act establishes that D.C. employers must provide reasonable workplace accommodations for all employees who are pregnant, have given birth, are breastfeeding or suffering from a medical condition — unless this would inflict an undue hardship on the employer. Examples of reasonable accommodation include more regular or longer rest periods, time off to recover from childbirth, temporary transfer to a less strenuous job role and obtaining or modifying equipment or seating.

Employers are also required to post a notice of rights in a visible and obvious place that is accessible to employees. The notice must be in both English and Spanish and employers must provide a translated notice to employees who do not speak English or Spanish.

If an employee believes that their employer has violated provisions contained in the Act they can make a court claim or file an administrative action with the D.C. Department of Employment Services. If the employer is found guilty they may have to compensate the employee for lost wages, reinstate the employee and pay attorney fees. The Act also provides that there may be civil penalties.

Pay, Tax and Benefit Trends

EUROPE: The latest data from the EU's statistical agency, Eurostat, shows that the gender pay gap differs extensively across the European Union. In 2013, gross hourly earnings for female workers in the EU countries were, on average, 16.4% lower than the earnings received by men. On a country by country basis, however, the gap ranged from 3.2% in Slovenia to 29.9% in Estonia.

GERMANY: IG Metall, Germany's Industrial Union of Metalworkers, has negotiated a 3.4% pay increase for industrial workers from April 2015, as well as a one-off payment of 150 euros per worker to cover the period from January to March 2015. The deal applies to industrial workers in the state of Baden Württemberg, however it is likely to be extended to the whole country. The deal is also likely to influence collective bargaining negotiations in other sectors in Germany.

IRISH REPUBLIC: In the Republic of Ireland, average weekly earnings in the private sector rose by 3% from 624.57 euros to 643.44 euros in the year leading up to Q4 2014. In the same period, average hourly earnings rose by 2.4% from 19.78 euros to 20.26 euros.

ITALY: Italy's National Institute of Social Security (the INPS) has issued [clarification](#) on the operational procedures that should be followed by employers when making an application to receive social security contribution relief for hiring permanent employees. The Law of Stability 2015 provides for social security contribution exemption for employers hiring employees on a permanent contract of employment. A circular issued at the end of January confirmed that, for permanent employees hired on a permanent contract during the course of 2015, employers would receive contribution exemptions for a period of three years from the date of hire. The exemption may not, however, exceed 8,060 euros per year.

SAUDI ARABIA: The Labour Ministry of Saudi Arabia has reminded employers that those who fail to implement the Wage Protection System will be sanctioned with denial of the services of the Labour Ministry (with exception of the issue and renewal of work permits). The Wage Protection System, which was first introduced in August 2013, requires companies in the private sector to submit employees' wage data to the Ministry electronically and pay employees their wages through local banks. It has been implemented gradually and since February 1st 2015 affects all companies with 320 employees or more. From April 1st 2015 all companies with 240 employees or more will be covered by the programme.

SINGAPORE: In its 2015 Budget, the Singaporean government stated that it will delay proposed increases to the monthly levies payable by employers who employ workers on S Passes and work permits. Instead of increasing the levies in July this year as originally planned, the increase will be deferred until 2017 for the manufacturing sector and until 2016 for all other sectors. For more information on work permits in Singapore and their associated levies please see our [HR Knowledgebase](#).

SLOVENIA: Since February 1st 2015 the cost of hiring student workers in Slovenia has increased. Student workers are now required to pay a contribution to the state pension, disability and health insurance schemes at a rate of 15.5% and their employers are required to pay a contribution at a rate of 8.85%. As a result, student workers will now receive lower net salaries and the overall labour cost for Slovenian employers employing student workers has risen from 30.38% to 33.74%.

SOUTH AFRICA: South Africa's Ministry of Finance is proposing a temporary reduction of employers' and employees' contributions to the Unemployment Insurance Fund. If introduced employers would have to pay a maximum of 10 South African rand (0.83 US dollars) per employee per month. Currently contributions can be as

high as 148.72 South African rand (12.36 US dollars) per employee per month. The Ministry has launched a consultation and comments must be submitted before March 20th 2015.

SOUTH AFRICA: Workers in the wholesale and retail sector in South Africa recently received a minimum wage increase. The increase, which varies between 6.1% and 8.1% depending on the specific job category, came into force at the beginning of February and will apply until January 31st 2016. Workers such as cashiers, assistant managers, forklift operators, security guards, sales assistants, shop assistant supervisors and trainee managers will be affected by the new rates.

UK: The Low Pay Commission has recommended that the UK statutory minimum wage for adults should increase by 20 pence to 6.70 pounds (9.20 euros) per hour as of October 2015. This should affect approximately 1.2 million workers in the UK. The government will study this recommendation and make a decision on the rate later in the year.

Other Global HR News in Brief

BERMUDA: With the implementation of Bermuda's new Work Permit Policy, employers must comply with certain obligations prior to applying for work permits. As of March 1st 2015, employers must advertise all job vacancies for at least eight consecutive days on the Bermuda Job Board before they apply for a Short-Term or Standard Work Permit. Any employer who wishes to fill vacancies for 'restricted job categories' must contact the Department of Workforce Development to find an appropriate job candidate before applying for a work permit.

FINLAND: According to Statistics Finland, approximately 83,000 Finnish employees aged between 15 and 64 were engaged on a zero-hour contract in 2014. This is about

4% of the Finnish workforce. Most notably, there were 47,000 women and 36,000 men working on zero-hour contracts. Nearly 50% of workers on zero-hour contracts were under the age of 25 and 65% were under the age of 30.

FRANCE: The French Supreme Court has clarified that employees must respect their post-termination non-compete covenants, even in cases where the business has closed. According to the Court, the subsequent cessation of the company's trading does not relieve the employee of their obligation to not compete with the employer. An employee who has not been released from their non-compete clause may continue to claim their compensatory indemnity payments in return for not engaging in competitive behaviour. [Cass. soc. No. 13-26374]

IVORY COAST: On February 25th 2015, the government of the Ivory Coast adopted a new draft labour code which would replace the existing law of 1995. The government has stated that the aim of this new law is to strengthen the competitiveness of companies by giving them more freedom when hiring and managing their employees. Special emphasis will also be placed on the employment of workers with disabilities.

LUXEMBOURG: The European Court of Justice (ECJ) has held that Luxembourg has not, in the case of occasional workers in the entertainment arts sector, complied with its duties under EU law to prevent the abuse of fixed-term employment contracts. EU law clearly states that where there are no statutory measures in place to prevent abuse, there must be objective reasons that justify the renewal of contracts, a maximum total duration or a limit to the number of renewals possible. The ECJ found that there is no requirement to provide an objective reason as justification for the renewal of successive contracts for this category of workers in Luxembourg. [Case C-238/14]

NEPAL: The Sexual Harassment in Workplaces (elimination) Act has now come into force in Nepal. Under the Act a victim of sexual harassment should make a complaint against the perpetrator to their manager, who will investigate the matter and try to settle it within 15 days. If no action is taken within this period the victim may take their complaint to a higher authority. Anyone who commits sexual harassment may face either six months in prison or a fine of 500,000 Nepalese rupees (5,027 US dollars).

NEW ZEALAND: The Employment Relations Amendment Bill has now come into force in New Zealand. Strict statutory rules regarding meal and rest periods have been removed and employers now have more flexibility to agree on when these breaks should be taken and how long they should last. Other changes concern flexible working arrangements, notice periods for strikes and lock-outs, and collective bargaining.

ROMANIA: Senators have adopted an amendment to the Romanian Labour Code which clarifies the provisions regarding weekly rest periods. Currently, the Labour Code states that employees are entitled to a weekly rest of two consecutive days, which must normally be Saturday and Sunday. The wording of this provision is deemed to be ambiguous and open to interpretation that may be detrimental to employees. Therefore it is proposed that the provision is amended to provide for a weekly rest period of 48 consecutive hours, usually Saturday and Sunday. The proposal must now be approved by the Chamber of Deputies.

SENEGAL: The government of Senegal has announced that they will be reforming the Labour Code in order to help young people enter the labour market. Apprenticeship contracts and internship contracts will be introduced to complement the current permanent and fixed-term contracts.

UK: It is now a criminal offence for an employer in the UK to require potential or existing employees to provide a copy of their criminal record through an enforced subject access request under the UK Data Protection Act. Enforced subject access normally occurs where a person wants to gain access to an individual's record of previous criminal convictions and cautions, but chooses not to use the established legal system. Guidance from the Information Commissioner's Office can be viewed [here](#).

UK: A UK company recently faced severe penalties after a worker died as a result of falling from a height of 7.6 meters. The Health and Safety Executive found the company's negligence (i.e. their failure to provide equipment to prevent falls) had been responsible for the worker's death. As such, the employer was fined 200,000 pounds (274,477 euros) for corporate manslaughter and 20,000 pounds (27,448 euros) for health and safety breaches. The company's owner was sentenced to eight months in prison, suspended for two years, and ordered to undertake 200 hours of unpaid work. He also had to publicise what had happened on the company's website and in a half page advertisement in a local newspaper.

Dates for your diary:

April 1st 2015: The monthly minimum wage for Moscow in [Russia](#) will increase to 15,000 rubles (198 euros).

April 1st 2015: From this date all companies in [Saudi Arabia](#) with 240 employees or more will be covered by the Wage Protection System.

April 1st 2015: Changes to rules on preliminary medical examinations become effective in [Poland](#).

April 7th 2015: A law amending the [Massachusetts](#) Maternity Leave Act will come into effect in the USA.

Latest news for business travellers:

Translink — the company which provides public transport in [Northern Ireland](#) — has announced that no bus and train services will be running on Friday, March 13th 2015 as a result of strike action. Services will resume on March 14th 2015.

[North Korea](#) has now lifted the travel restrictions it imposed on foreign travellers in October 2014 to prevent the spread of the Ebola virus.

The Australian government is advising its citizens to reconsider travelling to [Saudi Arabia](#). In recent months, there has been an increased risk of terrorist attacks against non-nationals in the country.

The US Department of State is warning its citizens to exercise caution when travelling to [Nigeria](#) during the country's elections. Originally due to be held on February 14th and February 28th, the elections have been postponed to March 28th and April 11th due to security concerns. It is possible that there will be outbreaks of violence around this time.

A severe sandstorm is causing travel disruption in [UAE](#). All motorists are advised to exercise extreme caution due to the reduced visibility on roads.

Cyclone Olwyn is currently being felt in [Australia](#), bringing with it heavy rain and strong winds. It is expected that it will develop into a category three storm.

FedEE news:

FEDEE FELLOWSHIP: The next Fellowship Meeting is due to take place this Spring. Individual Fellowship is open to HR Directors and their first reports and seasoned employment lawyers who have been in practice (or acted as an in-house counsel) for at least five years. If you are interested in becoming a Fellow, please contact Cassandra on cassandra.lu@fedee.com.

NEW COUNTRY COVERAGE: Full knowledgebase entries for [India](#) and [Singapore](#) are now available in the non-European section of our HR Knowledgebase.

NEW LAW PROGRAMME PRESENTATIONS: New audio-visual [Law Programme](#) presentations covering employment law in [Mexico](#), [Venezuela](#) and [New Zealand](#) are now available in the FedEE Members' Area. Updated presentations on employment law in [Germany](#) and [Poland](#) are also now live.

ADVICELINE ENQUIRY FORM: Please note that all enquiries on matters of employment law, pay data or other HR-related issues must now be submitted via our new [Adviceline Enquiry Form](#), which can be found on the top toolbar in the Members' Area.

NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE: Don't forget that FedEE's face-to-face networking community (called butN) is now 'live' and available for free to both members and non-members. This is a good opportunity to meet other professionals — particularly during business trips. Join up today at <http://www.but-n.com>.

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